INDEX

Petition and Motion to Reverse:	Page
Opinions below	2
Jurisdiction	3
Questions presented	3
Statute involved	4
Statement:	
The Board's findings and order	4
Proceedings in the Circuit Court of Appeals	8
The court's disposition of the case	10
Specification of errors to be urged	11
Reasons for granting the writs	12
Conclusion	35
Motion to dispense with printing of the transcript of testimony	37
Appendix	41

CITATIONS

Cases:	
Barber Asphalt Co. v. *Standard Co.*, 275 U. S. 372	17
International Harvester Co. v. *National Labor Relations Board* (C. C. A. 7th), settled prior to final hearing	19
National Labor Relations Board v. *Bradford Dyeing Ass'n*, 310 U. S. 318	18, 20
National Labor Relations Board v. *Independent Union of Craftsmen*, No. 236, this Term	19, 20, 35
National Labor Relations Board v. *Link-Belt Co.*, No. 235, this Term	19, 20, 35
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1	31
National Labor Relations Board v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241	14
National Labor Relations Board v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261	18
National Labor Relations Board v. *Swift & Co.*, pending in C. C. A. 8th	19
National Labor Relations Board v. *Wallace Mfg. Co.*, 95 F. (2d) 818	15
National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206	18, 20
New York Handkerchief Mfg. Co. v. *National Labor Relations Board*, decided July 11, 1940 (C. C. A. 7th)	15, 19

Statute:

	Page
National Labor Relations Act, Act of July 5, 1935, c. 372, 49 Stat. 449 (29 U. S. C., Supp. V, Sec. 151, *et seq.*):	
Sec. 8 (1)	3, 8
Sec. 8 (2)	3, 7
Sec. 8 (3)	4, 7
Sec. 8 (5)	4, 7
Sec. 10 (c)	13, 41
10 (e)	8, 9, 12, 13, 17, 20, 41
10 (f)	1, 3, 8, 9, 12, 13, 14, 17, 20, 42

Miscellaneous:

Moore's Federal Practice, c. 81, pp. 3425–3426	17
Rules of the United States Supreme Court, Rule 8	17
Rules of Civil Procedure for the District Courts:	
Rule 75	17
Rule 75 (c)	16, 17
Rule 75 (e)	16, 17
Rule 81 (a) (5)	17
Rule 81 (a) (2), (3), (7)	17
Rules of the Circuit Court of Appeals, Fourth Circuit:	
Rule 10, Secs. 1, 2, 3, 4, and 5	15
Paragraph 7 of special rules for Labor Board cases	15
Rules of the Circuit Court of Appeals, Seventh Circuit:	
Rules 9, 21, Sections 1, 2, and Rule 37b, section 3	8
Rule 35, Section 4	15, 19
Rule 75 (b) of Rules of Practice in Equity, 226 U. S., Appendix 23	17

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FOOTE BROTHERS GEAR & MACHINE CORPORATION

No. ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INDEPENDENT UNION OF GEAR WORKERS

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND MOTION TO REVERSE

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Seventh Circuit entered on July 24, 1940 (R. 1073–1074), setting aside and refusing enforcement of an order issued by the Board against Foote Brothers Gear & Machine Corporation.[1]

---

[1] The decree (R. 1073–1074) was entered jointly in two distinct proceedings instituted under Section 10 (f) of the National Labor Relations Act for review of the Board's order. One of the proceedings was initiated by petition of

The Solicitor General, on behalf of the Board, also moves that the Court, in the event the writs are issued, shall at that time without oral argument reverse and set aside the decree, entered on July 24, 1940, and remand the cases to the court below with directions: (a) to review the Board's order solely upon the transcript of the record certified by the Board, including the stenographic report of the question-and-answer testimony upon which the Board's order was entered, printing such portions thereof as may be designated or stipulated by the parties, and (b) to exclude from consideration any narrative or abstract of such testimony.

OPINIONS BELOW

The majority opinion of the Circuit Court of Appeals (R. 1052–1071), and the dissenting opinion of Judge Treanor (R. 1071–1073), are not yet reported. The findings of fact, conclusions of law, and order of the Board (R. 919–963) are reported in 14 N. L. R. B. 1045.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on July 24, 1940 (R. 1073–1074). An order

---

Foote Brothers Gear & Machine Corporation (hereinafter referred to as the Employer) (R. 2–26), the other by petition of the Independent Union of Gear Workers (hereinafter referred to as the Independent) (transcript in No. 7252, pp. 1–12), a labor organization found by the Board to be company-dominated. In its answer to the Employer's petition, the Board requested enforcement of its order (R. 26–30).

extending the time within which to file a petition for writs of certiorari for ten days from October 24, 1940, was signed by a Justice of this Court (R. 1075). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, upon review of an order of the Board under Section 10 (f) of the National Labor Relations Act, the circuit court of appeals may consider as a part of the record a narrative summary of the testimony, prepared without the participation or consent of the Board, not certified by the Board, and different from the transcript of the testimony upon which the Board's findings and order were based.

2. Whether there was substantial evidence to support the Board's findings that Foote Brothers Gear & Machine Corporation—

(a) interfered with, restrained and coerced its employees in the exercise of their organizational rights, in violation of Section 8 (1) of the National Labor Relations Act;

(b) dominated, interfered with, and contributed support to a labor organization of its employees, in violation of Section 8 (2) of the Act;

(c) discriminatorily discharged two of its employees because of their union membership and activities, in violation of Section 8 (3); and

(d) refused to bargain collectively with a labor organization designated as bargaining representative by a majority of the employees in an appropriate bargaining unit, in violation of Section 8 (5).

3. Whether, if the second question be answered in the affirmative, the Board's order is appropriate, under the circumstances of this case, and entitled to enforcement in full.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 41–43.

STATEMENT

The Board's findings and order.[2]—The board's findings [3] may be summarized briefly as follows.

During April of 1937 a majority of the Employer's office and clerical employees, a unit appropriate for collective-bargaining purposes (R. 942–944), joined the Stenographers, Typists, Book-

[2] The Board's findings of fact, conclusions of law, and order (R. 919–963) were issued after the customary procedure: charges (R. 31–35, 56–59), complaints (R. 38–41, 59–61, 55), answers (R. 52–54, 67–68, 75–77), hearing before a trial examiner (O. T. 1–3211), intermediate report (R. 763–800), exceptions thereto (R. 801–908), and oral argument (R. 975–1008). No question is raised as to these procedural steps. Nor is the jurisdiction of the Board questioned.

[3] The subsidiary findings and the evidence supporting them are discussed in detail under Point 2 of the Reasons for Granting the Writ, *infra*, pp. 15–17.

keepers & Assistants Union, No. 20074 (hereinafter called the S. T. B. A.) (R. 944–945)[4] and continued to designate it as their collective-bargaining agent during the entire month of May (R. 945, 936). On May 4, the S. T. B. A. notified the Employer by registered letter that it was the bargaining representative of such employees (R. 936).

On May 6, the Employer, through its vice-president, Barr, called together the representatives of its company-supported and dominated Employee Representation Plan (R. 927–929, 931).[5] Barr read to them a formal statement that the existing Plan was "legally entitled to recognition" if "supported by a majority", counselled them that there were "certain defects" in it and advised them to consult their attorney "as to the steps to take in perfecting your organization"; informally, however, he informed them that the Plan was not entitled to recognition (R. 931–933). No announcement whatever concerning the status of the Plan was made to the employees generally (R. 933). Two days later, the Independent Union of Gear Workers was inaugurated by Plan representatives,

[4] The Employer's officials, upon learning of the S. T. B. A.'s organizing efforts, systematically questioned the office employees with respect to their membership in and the activities of that organization (R. 930–931).

[5] This Plan had been formed in 1934, pursuant to suggestions by the Employer's predecessor, and had been operated since as little more than a phase of the Employer's personnel management (R. 927–929).

who then carried on an intensive 3-day membership campaign, a substantial part of which was conducted on company time and property and with the knowledge of the company's supervisors (R. 933–935). A membership meeting was held, the Plan chairman was elected president, and the Plan representatives were elected a temporary committee to seek recognition from the Employer (R. 935, 937).

Meanwhile, a meeting arranged for May 14 with the S. T. B. A. was postponed by the Employer, "due to the absence of an official of the Company who must be consulted" (R. 937). On that very day, however, the Employer signed an agreement recognizing the Independent as the "exclusive bargaining agency of all the employees", including the office and clerical employees, despite the fact that not a single member of the office and clerical force had signed an application with the Independent (nor did the Employer believe that any had done so) and despite the fact that the S. T. B. A. represented a majority of the office and clerical employees (as the S. T. B. A. had offered to prove to the Employer) (R. 937–938, 944, 936–937). The Employer, after recognizing the Independent, then refused to recognize the S. T. B. A. as the bargaining representative of the office employees and refused to enter into negotiations with the S. T. B. A. looking toward a collective agreement (R. 938–939, 946). A further contract with the Independent, covering all the employees, and providing, among

other things, for a check-off of dues, was entered into 2 weeks later (R. 939–940, 946).

In June, the Independent attempted, for the first time, to organize the office employees; this campaign, like that in the shop, was carried on to a substantial extent in the presence of supervisory officials (R. 935, 940, 945). Early in the same month, the Employer discharged an office employee, Rakowski, one of the most active members of the S. T. B. A., because of his membership and activities in that organization (R. 948–952). In the following November, a shop employee, Matoska, just elected vice president of Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge No. 2048 (hereinafter called the Amalgamated), was discharged because of his membership and activities in that organization (R. 952–956).

The Board concluded that the Employer had dominated and interfered with the formation and administration of the Independent and contributed support to it in violation of Section 8 (2) of the Act; had discriminated in regard to the hire and tenure of Rakowski and Matoska and thereby discouraged membership in a labor organization, in violation of Section 8 (3); and had refused to bargain collectively with the S. T. B. A. as the exclusive representative of all of its office employees, an appropriate unit, in violation of Section 8 (5); and that these acts, as well as the questioning of office employees regarding S. T. B. A. membership and activities, amounted to interference, restraint and

coercion prohibited by Section 8 (1) (R. 931, 960–961). The Board, accordingly, ordered the Employer to cease and desist from these unfair labor practices, and from giving effect to its contracts with the Independent, to withdraw recognition from and disestablish the Independent, to refund all dues deducted from the employees' wages, and to offer Rakowski and Matoska reinstatement with back pay (R. 961–963).

Proceedings in the Circuit Court of Appeals.— The Employer and the Independent filed separate petitions in the court below to review and set aside the Board's order (R. 2–26; transcript in No. 7252, pp. 1–12). The Board answered (R. 26–31), requesting full enforcement of its order against the Employer and certifying the transcript of the entire record in the proceeding, as provided in Section 10 (e) and (f) of the Act. Thereafter, the court, on the Employer's motion (R. 1027–1029, 1033–1034), and over the objections of the Board (R. 1030–1032), entered the following order (R. 1019):[6]

> On petition of counsel for petitioner, it is ordered that leave be, and it is hereby, granted: to petitioner to print as a part of the record in this Court its prepared narrative of the evidence in lieu of printing the question and answer transcript of the

[6] This order appears to have been a special departure from the then applicable rules of the Seventh Circuit governing Board cases. See Rules 9, 21, Sections 1, 2, and Rule 37b, Section 3.

> hearings herein; to respondent, if it deems the said narrative deficient in any instances, to correct such believed insufficiencies by printing in such instances as an appendix to its brief the questions and answers; * * *

The Employer, pursuant to this order, filed two printed volumes, captioned "Transcript of Record," which consisted of its narrative or abstract in lieu of the testimony, compiled without a single cross-reference to the verbatim transcript.[7] This narrative had been prepared by counsel for the Employer, without notice to or participation or approval by, the Board and had been handed to the Board during *oral argument* without ever having been received in evidence at the hearing (R. 995). The Board then made two separate motions: It moved to exclude the narrative summary from consideration as part of the record before the court (R. 1036–1045), and it moved for an order directing (a) that the Employer and the Board, respectively, designate, print, and file, as appendices to their briefs, such portions of the transcript, including such portions of the testimony in question and answer form, as they desired the court to read (in accordance with the rules of the court, effective November 10, 1939); or, in the al-

[7] The numbers in the margin of the narrative do not refer to the typewritten transcript of the entire record filed with the court pursuant to Section 10 (e) and (f). We are not advised and do not know what they purport to represent.

ternative, (b) that the Employer print and file the transcript of the entire record, including the testimony in question and answer form as it appears in said transcript; or, in the alternative, (c) that the Board be granted leave to print and file said transcript of the entire record at its own expense (R. 1034–1036). The court denied both these motions (R. 1048–1049). The briefs filed by the Employer and the Independent cited the narrative summary of the record prepared ex parte by their own counsel; the brief filed by the Board cited the original verbatim transcript. On July 24, 1940, the court entered its decision and handed down its opinion, wherein it quoted at length from the narrative summary prepared ex parte by counsel for the Employer and the Independent (R. 1052–1073). On the same day the court entered an order (R. 1049–1050) denying the Board's motion, renewed at oral argument, to exclude the narrative from consideration as part of the record.

The court's disposition of the case.—The majority of the court set aside, as unsupported by substantial evidence, the findings as to the Independent (R. 1061, 1063–1064), as to interference, restraint, and coercion through questioning of S. T. B. A. members (R. 1063), and as to Rakowski and Matoska (R. 1064, 1069); did not mention or discuss the finding of refusal to bargain with S. T. B. A.; and set aside the Board's order in its entirety (R. 1071). Judge Treanor, dissenting, expressed the view that the findings were supported by sub-

stantial evidence and that the order should be enforced except for the requirement that the checked-off dues be refunded (R. 1073).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

1. In considering as a part of the record a narrative of the testimony prepared by counsel for the Employer without the participation or consent of the Board, not certified by the Board, and different from the transcript of the testimony upon which the Board's findings and order were based.

2. In failing to hold that the following findings of the Board are supported by substantial evidence:

(a) That the employer dominated and interfered with the formation and administration of the Independent and contributed support to that organization;

(b) That the Employer interfered with, restrained, and coerced its employees in the exercise of their organizational rights by questioning employees regarding S. T. B. A. membership and activities;

(c) That the Employer discharged Rakowski and Matoska because of their union membership and activity;

(d) That the Employer refused to bargain collectively with the S. T. B. A. as the representative of its employees in an appropriate bargaining unit.

3. In setting aside and refusing to enforce the Board's order in full.

REASONS FOR GRANTING THE WRITS

I

The Circuit Court of Appeals in this case reviewed the order of the Board upon a narrative record, prepared without notice to, or participation or approval by the Board, and differing[8] from the transcript upon which the findings and order of the Board were based. The Employer was granted leave to print this narrative "as part of the record in this Court." True, the Board was granted leave, "if it deems such narrative deficient in any instances to correct such believed insufficiencies by printing in such instances as an appendix to its brief the questions and answers." But the narrow scope of this grant was quickly demonstrated when the court denied the Board's motion to strike the narrative and the Board's further motion to print and file, at its own expense, a verbatim transcript of the entire record. Thus the court not only refused to accept as a *substitute* for the narrative an accurate transcript of the entire record, printed at the Board's expense, but also refused to authorize the Board to print and file such a complete transcript as a *supplement* to the narrative. And, to climax this action, the court in its opinion quotes at length

---

[8] The following differences are cited as examples (R. refers to the narrative; O. T. refers to the transcript of the entire record filed with the court pursuant to Section 10 (e) and (f)): R. 182, O. T. 556; R. 185, O. T. 584; R. 573, O. T. 2839.

from the narrative, cited in the briefs for the Employer and the Independent, and, so far as appears, ignores the complete, typewritten transcript filed with the court pursuant to Section 10 (e) and (f), and cited in the Board's brief. The result of using the narrative and ignoring the typewritten transcript, if that, as appears, be the fact, was to render substantially useless the brief submitted by the Board since the major issue in the case was the sufficiency of the evidence. It is our contention that no such action is authorized under the provisions of the Act or under the usual and accepted course of judicial procedure.

1. The procedure under which an order of the Board may be reviewed and either enforced, modified, or set aside by a circuit court of appeals is described in subsections (c), (e), and (f) of Section 10 of the Act. Subsection (c) provides that "The testimony taken by such member, agent or agency of the Board shall be reduced to writing and filed with the Board. * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order * * *." Subsection (e) provides that, when it petitions for enforcement of its order, the Board "shall certify and file in the court a *transcript of the entire record* in the proceeding, including the pleadings and testimony upon which such

order was entered and the findings and order of the Board" and that the court shall have power "to make and enter *upon the pleadings, testimony, and proceedings set forth in such transcript* a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board." (Italics supplied.) Subsection (f), governing the procedure whereby a person agrieved by a final order of the Board may petition for review, provides that the petitioner shall file a similar transcript, certified by the Board, and that, upon such filing, "the court shall proceed in the same manner as in the case of an application by the Board under subsection (e)".

Under these provisions, as this Court has stated, "The case must be heard on the record as certified by the Board." *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, 250. But, we submit, the record certified by the Board was not the record upon which the Seventh Circuit insisted upon hearing the case at hand. The ex parte narrative filed as part of the record, and quoted in the court's opinion, was neither the transcript of the testimony as "reduced to writing and filed with the Board" and "upon which such order [of the Board] was entered" nor was it any "part" of such transcript.

Our position is confirmed by the uniform practice under the Act. Neither in this Court, nor in any other circuit court of appeals, has an order of

the Board ever been reviewed upon a narrative, let alone an ex parte narrative, of the testimony. The applicable court rules in all of the circuits, including the Seventh,[9] omit any specific mention of a narrative as a basis for reviewing orders of the Board. And, in the Fourth Circuit, the position has been taken that the provisions of the Act, quoted above, preclude the narration of the testimony.[10]

2. The procedure adopted by the Seventh Circuit, in any event, departs from the practice under the Rules of Civil Procedure.

---

[9] The present rules governing Board cases in the Seventh Circuit, adopted November 10, 1939, provide for an appendix system of printing the record and appear, clearly, to contemplate the question and answer, not the narrative, form of record. Rule 35, Section 4. The ex parte narrative form of record filed in this case, *supra*, p. 8, n. 6, as well as in the *New York Handkerchief* case, *infra*, p. 19, n. 16, was allowed in departure from the applicable rules of the Seventh Circuit.

[10] Senior Circuit Judge Parker, in *National Labor Relations Board* v. *Wallace Mfg. Co.*, 95 F. (2d) 818, denied a request by counsel for the respondent-employer to print the "entire testimony in narrative form." He stated: "* * * we are required by statute to hear Labor Board cases on the record made before the Board and there is no provision for narrating the record." His correspondence on this issue is set forth in the Record in the present case, at pp. 1042–1045.

Paragraph 7 of the special rules for Board cases in the Fourth Circuit, issued January 21, 1938, and initially set forth in a letter from Judge Parker to the clerk of that court (see R. 1042–1043), reads: "7. The testimony should not be narrated but should be printed exactly as it appears in the typewritten record; * * *." The present rules likewise appear to forbid narration of the record. See Rule 10, Secs. 1, 2, 3, 4, and 5, C. C. A. 4th.

Subsection (c) of Rule 75, 308 U. S. 645, 753–754, provides that "A party may prepare and file with his designation a condensed statement in narrative form of all or part of the testimony, and any other party to the appeal, if dissatisfied with the narrative statement, may require testimony in question and answer form to be substituted for all or part thereof." It is plain that subsection (c), together with (e),[11] contemplates the *substitution* of evidence in question-and-answer form so that only a single printed record shall be before the appellate court. In contrast, the unique procedure here adopted by the Seventh Circuit denied to the Board leave to *substitute* testimony in question-and-answer form for any part of the narrative. The grant of leave to correct believed insufficiencies in the narrative, by printing the questions and answers as an appendix to its brief, ensured at best the existence before the appellate court of two differing printed records in addition to the complete typewritten transcript.[12]

While the Rules of Civil Procedure, it is true, have not been made expressly applicable to pro-

[11] Subsection (e) provides that "For any infraction of this rule or for the unnecessary substitution by one party of evidence in question and answer form for a fair narrative statement proposed by another, the appellate court may withhold or impose costs * * * and costs may be imposed upon offending attorneys or parties."

[12] Even that questionable privilege was restricted so as to deny to the Board an opportunity to supplement all of the narrative, which was unsatisfactory to the Board in its entirety.

ceedings under Section 10 (e) and (f) of the Act (Rule 81 (a) (5), 308 U. S. 645, 763), they do require that proceedings to review and enforce orders of the Board shall conform to them, so far as applicable, in respects not covered by the Act. See Rules 75, 81 (a) (2), (3), (5), (7). Compare Rule 8 of this Court, 306 U. S. 690–691. Accord: *Moore's Federal Practice*, c. 81, pp. 3425–3426. Rule 75 (c) is plainly applicable and, therefore, unless Section 10 (e) and (f) covers the form of the record, should have been applied in the case at hand.

Every indication in the Act points to the necessity that the question and answer form of transcript should be used (*supra*, pp. 13–15). It follows that the Seventh Circuit either has violated Section 10 (e) and (f) of the Act (see pp. 13–15, *supra*) or it has violated Rule 75 (c) and (e).[13]

3. The review of an order of the Board upon a narrative of the evidence, even one not drawn up ex parte, would substantially impair the ability of the Board efficiently to administer the Act. The disadvantages of a narrative record have frequently been recognized. See Note of the Advisory Committee on the Rules of Civil Procedure

[13] Even the practice under the federal equity rules, which required a narrative record, never authorized the filing of two differing printed records in an appellate court. Only a single, agreed, narrative form record was contemplated. Rule 75 (b), 226 U. S., Appendix 23; *Barber Asphalt Co.* v. *Standard Co.*, 275 U. S. 372.

(Rule 75), and authorities there cited."[14] And the difficulties of preparing an adequate narrative are even more serious in Board cases—which turn upon questions of motive, the genuine character of purported bargaining, and the like. See *e. g., National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318. The Board's own experience has demonstrated that the formulation of an adequate narrative of the testimony imposes a burden on counsel out of all proportion to the supposed advantage of the reviewing court; its only attempt to agree upon a narrative was abandoned after five months of

---

[14] "This rule does not require the narrative form of record nor does it forbid its use. It allows a party to offer a narrative statement and permits his adversary to reject it and substitute question and answer form. The narrative form of testimony has been adversely criticized by the bar, by a considerable section of the bench, and by commentators. * * *

"Of the forty-two or forty-three states which do not require the narrative form of record, the division is about equal between (1) those which require that a transcript of the entire evidence, as taken by the stenographer, be inserted in the record on appeal so far as it relates to the errors relied upon; * * * and (2) those which permit the full stenographic transcript of relevant evidence to be used in the record on appeal at the option of one of the parties or the court; * * *."

laborious effort."[15] Should the narrative form of record be allowed in other cases, as it threatens to be,[16] the adequate enforcement of the Act in the circuits adopting such practice would be seriously hampered.

II

The testimony upon which the Board's subsidiary findings of fact are based is substantial and, in considerable part, uncontradicted. And the subsidiary findings, together with the inferences reasonably to be drawn from them, furnish ample support for the Board's order. But the majority of the Circuit Court of Appeals for the Seventh Circuit, by continuing to apply the technique of review described in our petition in the *Link-Belt* cases (Nos. 235 and 236, certiorari granted on October 14, 1940), denied enforcement to every provision of the order of the Board.

---

[15] The attempt was made in *International Harvester Co.* v. *National Labor Relations Board* (C. C. A. 7th), a case eventually settled prior to final hearing.

[16] In *New York Handkerchief Mfg. Co.* v. *National Labor Relations Board*, a case decided by the Circuit Court of Appeals for the Seventh Circuit on July 11, 1940, the employer-petitioner printed in the appendix to its brief, in lieu of the "parts of the record" provided for by the rules of the court (Rule 35, Section 4), a narrative of portions of the testimony. The court denied the Board's motion to strike the narrative "from the record." In *National Labor Relations Board* v. *Swift & Co.*, a case now pending in the Eighth Circuit, the employer-respondent, over the Board's objection, has submitted, with its brief, a narrative of the testimony. The Board has not been advised whether the court has permitted this document to be filed.

The majority in its opinion elaborates upon its "duty of examining the evidence" and states that "an examination of the evidence necessitates an analysis which to a certain extent is a weighing of such evidence" and which "involves the tedious study of testimony and witnesses' qualifications and biases, etc." (R. 1067). It then proceeds to indulge this concept of its duty by failing to mention major findings of the Board, by omitting important evidence supporting other findings, and by treating certain lines of evidence, contrary to testimony which the Board found persuasive, as if such evidence stood undisputed.

In short, we submit, the Seventh Circuit in this case, just as in the *Link-Belt* cases, has assumed to exercise a scope of review greatly in excess of that sanctioned by the Act and the decisions of this Court. Section 10 (e) and (f) of the Act; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318.

There follows a review of the Board's findings of fact, with citations to the supporting evidence,[17] and of the disposition of these findings in the Circuit Court of Appeals.

1. The Board based its ultimate findings—that the Employer (1) refused to bargain collectively with the S. T. B. A., the duly selected bargaining

[17] The citations to the evidence refer to the typewritten transcript of the entire record (O. T.) which has been certified to this Court.

representative of the office and clerical employees, an appropriate unit, and (2) dominated and interfered with the formation and administration of the Independent, and contributed support to that organization — upon the following underlying findings:

(a) In April of 1937, shortly after this Court upheld the constitutionality of the Act, the S. T. B. A. commenced to organize the office and clerical employees of the Employer, and continued its efforts through the greater part of that month (R. 930, 944; O. T. 54–55, Bd. Exh. 5). The Employer's officials, upon learning of this activity, systematically questioned the employees in that department concerning their union membership and the activities of the S. T. B. A. (R. 930–931; O. T. 1078–1084, 2829–2830, 2597, 2839, 711–712, 747–748, 1210–1211, 1281–1283, 2354–2355, 2633–2634).[18]

(b) During April of 1937, thirty-three office and clerical employees signed application cards designating the S. T. B. A. their representative for the purpose of collective bargaining with the Employer (R. 944; Bd. Exhs. 5 and 11, R. 646–647). These thirty-three, who constituted a majority of the employees in an appropriate collective-bargaining unit, continued to designate the S. T. B. A. as their

[18] The Board found that by this interrogation, under the circumstances, the Employer "interfered with, restrained, and coerced its employees in the exercise of their organizational rights, in violation of Section 8 (1) of the Act" (R. 930–931, 960).

bargaining representative throughout the entire month of May 1937 (R. 942–945, 960; O. T. 173, 50, 36, 40, 97–98, 140, Bd. Exhs. 5 and 11, R. 646).

(c) On May 4, 1937, the S. T. B. A., by registered letter, informed the Employer that the S. T. B. A. had been designated as collective bargaining representative by a majority of the office and clerical workers, and requested a meeting for the purpose of bargaining collectively with respect to the wages, hours, and other working conditions of such employees (R. 936, 945; O. T. 101–104, Bd. Exh. 7, R. 635–636). The Employer replied to this letter on May 5, 1937, suggesting that a meeting be held on May 7, 1937; this date proved unsatisfactory, and the meeting was held on May 10, 1937 (R. 936, 945; O. T. 105–109, Bd. Exh. 6, R. 634).

(d) Meanwhile, on May 6, 1937, Barr, the Employer's vice president, summoned to the office of its president a Committee representing its Employee Representation Plan (R. 931; O. T. 1101, 2551). This Plan had been formed in 1934, pursuant to suggestions by the Employer's predecessor, and had operated since as little more than a phase of the Employer's personnel management, supported and maintained by the Employer (R. 927–929; O. T. 547–551, 554, 2837, 754, 757, 2681–2682, 2551–2552, 1101–1103); it was characterized by elections and Committee meetings on company time and property (the Plan's governing body held its meetings only in the office of the Employer's

president or vice president), by the absence of any dues or other payments by its members, by only a single membership meeting in its history, by the failure ever to enter into any collective agreement with the Employer concerning wages, hours, or other conditions of employment, and by the apparent absence of any attempt to obtain such an agreement (R. 928–929; O. T. 550–551, 556, 622, 633, 762).

(e) Barr read to the Plan Committee, at this meeting on May 6, 1937, a formal statement assuring them that "your present Employee Organization is legally entitled to recognition by us under the National Labor Relations Act if it is supported by a majority of the employees involved," counseling them that "there are certain defects in your manner of operation, and in your articles of association, that might operate against your best interests in the event of challenge," and advising them "to seek legal advice from a competent lawyer of your own choosing * * * as to the steps to take in perfecting your organization" (R. 931–932; O. T. 1101–1103, 2551–2552, Resp. Exh. 3, R. 672–673). Informally, however, Barr informed the representatives that the Plan, which he characterized as a "company union," was in fact unlawful and not entitled to recognition (R. 932–933; O. T. 1101, 1103, 2279). So far as appears, the Employer made no announcement to the employees generally with respect to the status of

the Plan; and Barr's formal statement, seemingly intended for employee consumption, was in fact given no general publicity in the plant either by the Employer or by the Plan shop committee (R. 933). Two days later, on May 8, 1937, five of the Plan representatives, together with the Plan chairman and a friend of his, consulted an attorney for advice in forming an unaffiliated labor organization, drafted a constitution, and initiated the Independent (R. 933; O. T. 1111–1113, 1149, 2282, Bd. Exh. 12). The Independent was structurally similar to the Plan and, like the Plan, was an "inside" organization (R. 933, 942; Bd. Exh. 12). The Board found (R. 933–934) that Barr's activity "under the circumstances was an invitation and instruction to the individual members to establish and carry on through a new 'inside' labor organization, as in fact they did." The Plan chairman and representatives, whom Barr had called into the president's office on May 6th, performed (with one other employee) all of the work of soliciting memberships in the new organization (O. T. 561, 1094, 1095, 1114–1116, 1740, 1460); and later, the Plan chairman was elected president of the Independent and the Plan representatives were selected as a committee to seek recognition from the Employer (R. 934–935; O. T. 586–587, 1125, 1385–1386, 1397–1398).

(f) In the space of three days, May 10, 11 and 12, the six Plan representatives, together with Plan Chairman Egner and his friend, acting to a sub-

stantial extent on company time and property (R. 934–935; O. T. 572–580, 765–766, 947–948, 1121–1123, 1287–1290, 1311–1321, 1441–1442, 2276–2277, 2479–2480), secured the signatures of more than 200 of the approximately 300 shop employees as members of the Independent (R. 934; O. T. 1114–1116, 1740, 561, 1462–1463, Int. Exh. 5A). From the intensive character of this campaign, among other evidence, the Board inferred that the solicitation was accomplished "with the knowledge and tacit permission of the respondent's supervisors" (R. 934).

(g) Meanwhile, the meeting scheduled for May 10, 1937, between the Employer and the S. T. B. A., had been held; the S. T. B. A. asserted the fact that it was the representative of the majority of the office and clerical employees, offered to submit its application cards, for comparison with the Employer's pay roll, to a conciliator of the United States Labor Department, or to the Board, and submitted to the Employer a proposed contract; the Employer thereupon requested time to study the proposals, and the meeting was adjourned to May 14th (R. 936–937; O. T. 106–109, Bd. Exh. 8, R. 636–639).

(h) On May 13, 1937, the Employer, through its president, Fowler, postponed until May 17th the meeting arranged for May 14th, "due to the absence of an official of the Company who must be consulted" (R. 937; O. T. 116–117, Bd. Exh. 9, R. 640). On May 14th, the date of the cancelled

meeting with the S. T. B. A., the Independent submitted to the Employer a proposed "agreement", which recited that the Independent had proved its majority representation to the satisfaction of the Employer and that the Employer recognized the Independent as the "exclusive bargaining agency of all the employees" (R. 937; O. T. 1126, 1135, 2843, Bd. Exh. 13, R. 648). Fowler signed the agreement, on that same day, recognizing the Independent as the "exclusive bargaining agency of all the employees"—including the office and clerical employees—despite the fact that not a single member of the office or clerical force had signed an application with the Independent, as the Employer must have known, since its secretary had checked the Independent applications against its payroll, and despite the fact that the S. T. B. A. represented a majority of the office and clerical employees and had previously offered to prove it to the Employer (R. 937–938; O. T. 2824, Bd. Exh. 13, R. 648; O. T. 1475, Int. Exh. 5A; Bd. Exh. 11, R. 646–647). The "agreement" was then posted upon the plant bulletin board (R. 938; O. T. 590–591, 771). All of the negotiations consumed only 4 or 5 hours (R. 938, O. T. 2875–2878).[19] At no

[19] Fowler on receiving the "agreement" summoned Egner, who had been the Plan chairman, and asked for proof of the Independent's majority representation: Egner tendered the signed petitions, and Fowler turned them over to the Employer's secretary for comparison of the names with its pay roll while he, meanwhile, took the "agreement" to his attorneys for their approval (R. 937; O. T. 1133, 2870–2871, 2844,

time, prior to its recognition of the Independent, did the Employer in any manner inform the S. T. B. A. that another labor organization was claiming recognition as the exclusive bargaining representative of the office and clerical employees (R. 938).

(i) On May 17, 1937, at the postponed meeting with the S. T. B. A., the Employer, acting through its president and its attorney, informed the representatives of the S. T. B. A. that the Independent had been accorded recognition as the exclusive collective bargaining representative of all of the employees, including the office and clerical force, and stated that unless and until the Board made a "classification" of the office workers as a separate bargaining unit, the Employer had no power to recognize any labor organization for a particular group of its employees (R. 938–939; O. T. 2492–2493, 2538). The Employer handed the S. T. B. A. representatives a memorandum, setting forth its views with respect to the various pro-

---

2705–2706, 2820, Int. Exh. 5A). After an immaterial change in the agreement, Fowler returned to his office, was informed that the Independent had a majority, proceeded to reach and "finally located" by long distance telephone the three absent directors (including the "official" whose absence had been the ground for postponing the S. T. B. A. conference), obtained their consent to his executing the agreement, obtained a similar consent from the remaining directors, and again summoned Egner (R. 937; O. T. 2820–2823, 2875–2878, 2982–2984). The secretary had informed Fowler that verifying the authenticity of the signatures on the petitions "would take several days," so a certificate of authenticity was prepared and signed by Egner (R. 938; O. T. 2822, Bd. Exh. 15, R. 649).

visions in the proposal submitted, previously, by the S. T. B. A.; but, pending the "classification" mentioned above, the Employer declined to negotiate further with the S. T. B. A. (R. 939; O. T. 117–118, 2492, 2538, Bd. Exh. 10, R. 641–645). The Board found (R. 946–947) that the Employer's "conduct was induced by a rejection of the collective bargaining principle."

(j) On May 28, 1937, the Employer and the Independent entered into a collective contract, without a fixed duration, and subject to termination on May 1st of any year upon one month's notice, which recognized the Independent as the exclusive bargaining representative of all the employees and provided, among other things, for a check-off of dues from the wages of each member of the Independent (R. 939–940; O. T. 1386–1387, Int. Exh. 2, R. 654–658).

(k) During June of 1937, the Independent began to solicit members among the office and clerical workers, and, in contrast to the persistent questioning of employees by the Employer's officials during the S. T. B. A. campaign (R. 930; p. 21, *supra*), the Independent was allowed to conduct this solicitation openly during working hours and in the presence of the Employer's supervisory officials (R. 935, 940; O. T. 1286–1290, 1297–1303, 1318–1321, 1944–1946, 1966–1967, 431–432, 1007–1008, 1475, Int. Exh. 4, 5A, 5B, Bd. Exh. 11, R. 646–647). On June 11, 1937, the Employer discharged Rakowski, one of

the most active members of the S. T. B. A. who had recruited 24 of the 33 S. T. B. A. members (R. 948–952; O. T. 1062–1064, 1185, 1186, Bd. Exh. 5). Coincident with the solicitation by the Independent during June many members withdrew from the S. T. B. A. (R. 940, 944–945; O. T. 428–429, 442, 2371, 2314–2316, 2301–2302, 2234–2236, Bd. Exh 5, Int. Exh. 5B). The Board found (R. 940) that the "facts occurring subsequent to May 13 show not only that the respondent continued to favor and support the Independent but demonstrate the effective use which the respondent made of its creature to destroy self-organization among its employees, especially among its office workers."[20]

2. The court disposed of each of the foregoing findings or groups of findings as follows:

(a) The court dismissed the Employer's persistent questioning of its office and clerical employees during the S. T. B. A. campaign with the observation that "mere inquiries were made" and rejected the Board's finding (R. 930–931, 960) that the persistent interrogation, under the circumstances, amounted to interference, restraint, or coercion (R. 1062–1063). There is no recognition in the opin-

[20] For the sake of brevity, we do not discuss the evidence supporting the Board's finding (R. 948–952) that Rakowski was discriminatorily discharged by the Employer because of his activities in the S. T. B. A. and its finding (R. 952–956) that, in November 1937, one Matoska, a shop employee, who had just been elected vice president of the Amalgamated, was discriminatorily discharged by the Employer because of his activities in the Associated. We contend, however, that both findings are fully supported by the evidence

ion that such interrogation is one of the most common, and effective, methods of employer interference in union affairs; and no significance was attached to the questioning as evidence of a discriminatory motive in discharging Rakowski, one of the most active S. T. B. A. workers, who was interrogated by the Employer's president (see R. 952–960).

(b)–(c) The court states that "during April 1937, the S. T. B. A. had been trying to organize the Employer's office employees" and barely hints at the fact, not controverted at the hearing, that the S. T. B. A. had a majority of the office and clerical employees (R. 1059). It approves as "reasonable and proper" the finding that the office and clerical employees throughout May of 1937 were an appropriate bargaining unit (R. 1070–1071), but it refers to this finding only at the end of its opinion and ignores entirely the finding that the Employer refused to bargain collectively with the S. T. B. A. (see pp. 34–35, *infra*).

(d) The opinion of the court does not mention the finding of the Board as to the company origin of the old Employees Representation Plan, though it hints at a spontaneous origin (R. 1057), and ignores the findings that the Plan used company time and premises, never held but one membership meeting, and never attempted to obtain a collective agreement (see pp. 22–23, *supra*). It dismissed from consideration this whole phase of the case on

the novel theory that the Employer's domination of its Representation Plan was not an unfair labor practice under the Act prior to the *Jones & Laughlin* decision (April 12, 1937) and on the erroneous assumption that the Employer shortly thereafter dissolved the Plan (R. 1061).

(e) The opinion contains not a single reference to the Board's finding (R. 933–934) that the Employer, on May 6th, through its vice-president, Barr, invited and instructed the Plan representatives to form an "inside" union; and its recital of the events on that date omits crucial facts which support that finding. Specifically, the opinion of the court omits to state (1) that Barr, in reading a formal statement, advised the Plan representatives to "perfect" their "present Employee Organization"; (2) that Barr accompanied this advice with the information that the Plan, which he characterized as a "company union", was in fact unlawful and not entitled to recognition; and (3) that no announcement terminating the Plan, or even advising that it be perfected, was ever made to the employees as a whole (see pp. 23–24, *supra*). The court's opinion thus obscures the essential bases of the Board's finding, namely, that the Employer advised the continuance, with merely formal changes, of a labor organization which it dominated, and which it ~~recognized as~~ realized was illegal, and that the Employer discussed the future organization only with the representatives of the older domi-

nated organization. By relying upon a partial statement of the facts, the court characterized the Employer's actions as merely a refusal to "advise its employees" with respect to "future organization in the shop" and accepted as conclusive the testimony of the Plan chairman that the decision by the Plan representatives to form an "inside" union was based upon the known wishes of the workers in the plant (R. 1057–1058). The fact that the dominant group in the formation and promotion of the Independent was composed of the Plan chairman and representatives—the very group the Employer had chosen to advise—was disposed of simply with the observation that "It is natural for a man who is active in union affairs to continue such activities because of his liking for them." (R. 1063.)

(f) The court characterized the 3-day campaign, in which eight organizers signed up 210 of the 280 shop employees, as "more or less active campaigning" carried on "here and there, at off moments" (R. 1058). For the Board's inference (R. 934) that such a thorough canvassing of the plant must have been carried on with the supervisor's knowledge, the court substituted its own finding (R. 1061) that the company, "as nearly as was humanly possible, maintained a truly 'neutral' * * * policy." This conclusion is based on the court's unsupportable observation (R. 1061–1062) that it is "undisputed" that the S. T. B. A., the Amalga-

mated, and the Independent all solicited on company time, and that the foremen impartially tried to stop all such activity—a view of the record which ignores (1) the prompt questioning of office employees by high officials of the Employer in respect of the membership and activities of the S. T. B. A., a measure to which the Independent was never subjected, and (2) the fact that neither the S. T. B. A. nor the Amalgamated engaged in any such open, widespread, and intensive solicitation as did the Independent (*supra*, pp. 21–22, 24–25).

(g)–(h) The court, apparently, attached no significance to the haste with which the Employer accorded recognition to the Independent as bargaining representative of all of the employees, an act which the Employer relied upon to compel the office and clerical workers (a majority of whom had designated the S. T. B. A.) to deal through a labor organization which none of them had designated (pp. 25–27, *supra*). The fact that the Independent had no members among the office workers, as the Employer must have known, and that the S. T. B. A. represented a majority of them (pp. 21–22, 26, *supra*), are scarcely suggested in the opinion (R. 1071, 1059). The court, instead of stating these facts, remarked that the Independent's "majority" made it "the statutory duty of Employer to recognize it" (R. 1063), and that "the real issue

[raised by the Board's order] is the survival of the union which 75 percent of the employees organized and selected as their bargaining agency" (R. 1070). The inconsistency of the opinion is the more striking since the court expressly approved the Board's determination that the office and clerical employees constituted an appropriate bargaining unit, separate from those in the shop (R. 1070–1071).

(i) The Board's finding that the Employer refused to bargain collectively with the S. T. B. A.—a major issue in the case and the basis of a cease and desist provision of the order (R. 961)—was wholly ignored by the court. Indeed, the opinion indicates that the court was under the impression that no such issue was involved.[21] The court failed to mention the uncontested evidence of the S. T. B. A. majority among the office employees, stating merely (R. 1059) that "the S. T. B. A. had been

[21] The court said: "The Board made no order in respect to this finding [regarding the office bargaining unit]. We feel justified in expressing our views on this question, nevertheless, because of possible future activities of employees of this group" (R. 1071). Any such "future activities," if directed toward collective bargaining, however, were foreclosed by the court's denial of enforcement to any part of the Board's order, thus leaving the Employer free to continue to recognize the Independent and to continue to give effect to its contract with that organization covering all the employees, including the office and clerical force, and to continue its refusal to bargain collectively with any representative of such employees (pp. 7–8, *supra*).

trying to organize" them and that its agent "asserted" it had a majority, apparently attached no importance to the Employer's recognition of the Independent on May 14, after postponing its conference with the S. T. B. A. set for that very day (R. 1059–1060); omitted any reference to the Employer's express refusal to recognize the S. T. B. A. on May 17; and described as "counterproposals" the company's memorandum, handed to the S. T. B. A. after these acts had rendered bargaining an academic question (R. 1060).

(j)–(k) The steps taken by the Employer to consolidate the position of the dominated Independent, and thus destroy self-organization among its employees (see pp. 28–29, *supra*), were viewed by the court as persuasive evidence that the Independent was not company dominated—a view which ignores the entire evidence bearing upon the Employer's activities in connection with the initiation and recognition of the Independent.

We submit that the permissible bounds of review were transcended in this case, just as in the *Link-Belt* cases (Nos. 235 and 236, certiorari granted on October 14, 1940), and that effective enforcement of the Act in the Seventh Circuit is in substantial jeopardy.

CONCLUSION

It is respectfully submitted that, for the foregoing reasons, this petition for writs of certiorari

should be granted, and the decree entered on July 24, 1940, should be reversed without oral argument and the cases remanded to the court below with directions to proceed in accordance with the prayer in our motion.

FRANCIS BIDDLE,
Solicitor General.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

NOVEMBER 1940.

In the Supreme Court of the United States

OCTOBER TERM, 1940

NOS. ——, ——

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FOOTE BROTHERS GEAR & MACHINE CORPORATION

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INDEPENDENT UNION OF GEAR WORKERS

MOTION TO DISPENSE WITH PRINTING OF THE TRANSCRIPT OF TESIMONY

The Solicitor General, on behalf of the National Labor Relations Board, prays that the Court shall consider the petition for writs of certiorari in the above-entitled cases, filed herewith, upon the typewritten transcript of the testimony, as certified and filed by the Board in the Circuit Court of Appeals, and shall dispense with the requirement of printing such transcript.

1. As shown in our petition (pp. 1–36, *supra*), the Circuit Court of Appeals for the Seventh Circuit, over the objection of the Board, granted

the motion of Foote Brothers Gear & Machine Corporation (hereinafter called the Employer) to print and file "as a part of the record" a narrative of the testimony, prepared ex parte by counsel for the Employer, not certified by the Board, and differing from the transcript upon which the Board's findings and order were based. The court then denied the Board's separate motions (a) to strike the narrative, and (b) to issue an order providing either for the printing of the verbatim transcript of the entire record (a typewritten transcript of which had been filed with the court pursuant to Section 10 (e) and (f)), by the Employer or by the Board, or for the designation and printing of portions of such transcript by both parties. Thus the Court not only refused to substitute for the ex parte narrative an accurate transcript of the entire testimony, printed at the Board's expense, but also refused to permit the Board to supplement the narrative with such a printed transcript. And the narrative was therefore the only *printed* "record" before the court.

2. In our petition (pp. 12–19, *supra*), the procedure thus adopted by the court is assigned as error and shown to violate the provisions of the National Labor Relations Act, to depart from the practice under both the Rules of Civil Procedure and the federal equity rules, and to impair the efficient administration of the Act. We are moving that the Court, in the event writs of certiorari

are issued, shall at that time set aside the decree and remand the cases to the court below with directions to consider them solely upon the entire verbatim record required by the Act (i. e. the transcript of the proceedings, including the stenographic report of the question-and-answer testimony upon which the Board's order was entered), printing such portions thereof as may be stipulated, and to exclude from consideration the employer's ex parte printed narrative of such testimony.

3. The record certified to this Court by the Circuit Court of Appeals consists of the following: (1) the typewritten transcript of the entire record as certified and filed by the Board in the court below, pursuant to Section 10 (e) and (f) of the Act; (2) a printed document in two volumes, captioned "Transcript of Record", which contains, in lieu of the testimony, the narrative mentioned above, together with the pleadings before the Board, the Board's findings of fact and order, and the order of the court below authorizing the filing of the narrative "as part of the record"; (3) a third volume containing other pertinent motions and orders in the court below, the majority opinion and the decree of the court below setting aside and refusing to enforce the Board's order, and the dissenting opinion of Judge Treanor; and (4) a volume containing the pleadings and a stipulation and order in the case initiated by the Independent Union of Gear Workers.

4. A disposition of the case in accordance with our motion would not require a detailed examination by this Court of the testimony, and, therefore, the printing of the verbatim transcript of testimony (consisting of 3,211 typewritten pages) would appear to be unnecessary at this time.

Under such a disposition, moreover, the Board would still face the possibility that, even if a printed transcript were available, the Seventh Circuit would apply its present rules calling for an appendix system of printing the testimony. Rule 35, C. C. A. 7th. Until our motion is acted upon, therefore, the Board cannot be sure that the substantial expense of printing the transcript of the testimony will not be duplicated.

In the event the Court issues the writs, yet denies our motion, the Board stands ready to print and file forthwith a transcript of the testimony in question-and-answer form.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

NOVEMBER 1940.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are as follows:

SEC. 10. * * *

* * * * *

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in

question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order

complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

U. S. GOVERNMENT PRINTING OFFICE: 1940